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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,661	06/27/2003	David W. Koenig	KCC 4948 (K-C 17,907)	7070
321	7590	03/09/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,661

Applicant(s)

KOENIG ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date various(3).
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed December 21, 2005, with respect to the objections to claims 17, 19 and 23 have been fully considered and are persuasive. The objections to the claims have been withdrawn.

Applicant's arguments with respect to the rejection of claims 1-30 under 35 U.S.C. 102 have been fully considered but they are not persuasive.

With regard to applicant's argument that Howard does not disclose a wet wipe comprising a wipe substrate, a Yucca species extract and a broad spectrum antimicrobial, Examiner disagrees. Howard states that "among the cosmetic products which can benefit from incorporation of the jojoba products of the invention are those selected from the group consisting of...sanitizing wipes" ('171, Col. 3, lines 4-11). By teaching incorporation or use of the solution of the instant invention in a sanitizing wipe, Howard is teaching a wipe with the jojoba solution and thus a wipe impregnated with a jojoba solution containing the yucca and green tea extracts, the wipe inherently defining a substrate. With regard to applicant's argument that tables of ingredients do not teach a liquid formulation, Examiner disagrees. The tables are part of the disclosure of the prior art of Howard, and the tables are listings of ingredients of sample formulations of the jojoba solution taught by Howard. With regard to applicant's subsequent argument that a rejection under 35 U.S.C. 102(e) is therefore not proper as applicant believes that Howard does not disclose all of the limitations of claim 1, Examiner disagrees for reasons already stated with respect to the individual arguments.

With regard to Applicant's argument that claim 2 is patentable over Howard because Howard does not teach the composition set forth in claim 2, Examiner disagrees. Upon further

search, Examiner has found references that state that yucca extract as used in the food and cosmetic industries is widely known to be in powder form extracted from the Yucca Schidigera plant, and therefore Howard in fact does teach 100% Yucca Schidigera powder by virtue of teaching yucca extract.

Information Disclosure Statements

The information disclosure statements (IDS) submitted on October 3, 2005, December 21, 2005 and February 14, 2006 were filed after the mailing date of the non-final Office action on September 22, 2005. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Howard et al (U.S. Patent No. 6,552,171).

With respect to **Claim 1**: Howard teaches a hydrolyzed jojoba protein solution for use in skin lotions, creams, and sanitizing wipes (Col. 3, lines 4,5,11,12). Howard teaches compositions for hand lotion (Col. 8, Table 6) and hand cream (Col. 9, Table 7) comprising said jojoba protein solution, as well as Yucca extract and green tea extract, which contains catechin, considered here as a broad spectrum antimicrobial.

With respect to **Claims 3 and 4**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (Col. 8, Table 6).

With respect to **Claim 5**: Howard teaches that the hand lotion and hand cream solutions also contain green tea extract (Col. 8, Table 6 and Col. 9, Table 7) whose active ingredient is catechin, which has widely known antioxidant and antimicrobial uses.

With respect to **Claims 7 and 8**: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6 and Col. 9, Table 7) Therefore the catechin is present in at most 0.05% by weight of the solution.

With respect to **Claim 9**: Howard teaches that the hand lotion and hand cream solutions are also comprised of goldenrod extract, used as an astringent in both solutions (Col. 8, Table 6 and Col. 9, Table 7).

With respect to **Claim 10**: Howard teaches a hydrolyzed jojoba protein solution for use in sanitizing wipes (Col. 3, lines 4,5,11,12). Howard teaches hand cream and hand lotion solutions comprised of Yucca extract and green tea extract (Col. 8, Table 6 and Col. 9, Table 7), which contains catechin, considered here to be a broad spectrum antimicrobial.

With respect to **Claims 12 and 13**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (see Col. 8, Table 6).

With respect to **Claims 14 and 15**: Howard teaches that the hand lotion and hand cream solutions also contain green tea extract whose active ingredient is catechin, which has widely known antioxidant and antimicrobial uses.

With respect to **Claims 16 and 17**: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6 and Col. 9, Table 7) Therefore the catechin is present in at most 0.05% by weight of the solution.

With respect to **Claim 18**: Howard teaches that the hand lotion and hand cream solutions are also comprised of goldenrod extract, used as an astringent in both solutions (Col. 8, Table 6 and Col. 9, Table 7).

With respect to **Claim 19**: Howard teaches creating a jojoba solution that can be used in sanitary wipes, hand lotion and hand cream, that is comprised of Yucca extract (Col. 8, Table 6, Col. 9, Table 7). The roots of Yucca species plants contain a saponin (see Yahoo Geocities reference, page 1, paragraph 12) and saponins are a class of triterpenes. Nostro teaches that antimicrobial activity is attributed to terpenes. He also teaches that plant extracts containing saponin exhibit bacterial growth inhibition of both Gram positive bacteria and Gram negative bacteria (Nostro et al, *Letters in Applied Microbiology*, 2000, 30, pp. 379-384 (provided by Applicant)).

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With respect to **Claims 21 and 22**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (see Col. 8, Table 6 and Col. 9, Table 7).

With respect to **Claim 23**: Howard teaches creating a jojoba solution that can be used in sanitary wipes, hand lotion and hand cream, that is comprised of Yucca extract and green tea extract which contains catechin, considered here to be a broad spectrum antimicrobial (Col. 8, Table 6, Col. 9, Table 7). The roots of Yucca species plants contain a saponin (see Yahoo Geocities reference, page 1, paragraph 12) and saponins are a class of triterpenes. Nostro teaches that antimicrobial activity is attributed to terpenes. He also teaches that plant extracts containing saponin exhibit bacterial growth inhibition of both Gram positive bacteria and Gram negative bacteria (Nostro et al, *Letters in Applied Microbiology*, 2000, 30, pp. 379-384 (provided by Applicant)).

With respect to **Claims 25 and 26**: Howard teaches that the hand lotion and hand cream solutions comprising the jojoba protein both comprise Yucca extract present in 0.03% by weight (see Col. 8, Table 6).

With respect to **Claims 27 and 28**: Howard teaches that the hand lotion and hand cream solutions also contain green tea extract whose active ingredient is catechin, which has widely known antioxidant and antimicrobial uses.

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With respect to **Claims 29 and 30**: Howard teaches that the green tea extract is present in both the hand lotion and hand cream solutions in 0.05% by weight (Col. 8, Table 6 and Col. 9, Table 7) Therefore the catechin is present in at most 0.05% by weight of the solution.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al (U.S. Patent No. 6,552,171).

With respect to **Claim 2,11,20,24**: Howard does not explicitly teach 100% Yucca Schidigera powder, however yucca extract as used in the food and cosmetic industries is widely known to be in pure powder form from the Yucca Schidigera plant. Therefore it would be obvious to one of ordinary skill in the art to use 100% Yucca Schidigera powder as taught implicitly by Howard.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

